

REMARKS

Claims 37-52 were presented. Claims 37, 38, 41-43, 46 and 47 were rejected under the judicially created doctrine of obviousness-type double patenting over commonly assigned U.S. Patent No. 6,684,943 (hereinafter “the ’943 patent”), which matured from the parent application of the present application. Claims 37, 38, 41-43, 46 and 47 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over commonly assigned co-pending U.S. Patent Application Serial No. 10/608,809 (hereinafter “the ’809 application”). Claims 37, 38 and 41 were provisionally rejected under 35 U.S.C. §101 over claims 41 and 45 of commonly assigned co-pending U.S. Patent Application Serial No. 10/608,809. The Examiner has indicated that claims 37 and 38 conflict with claims 41 and 45 of commonly assigned co-pending U.S. Patent Application Serial No. 10/608,809. Claims 39, 40, 44, 45 and 48-52 were withdrawn by the Examiner from further consideration.

The Examiner has indicated that co-pending U.S. Patent Application Serial No. 10/608,809 may become the subject of an interference.

Response to “Obviousness-type Double Patenting” Rejection of Claims 37, 38, 41-43, 46 and 47 over the ’943 Patent

Claims 37, 38, 41-43, 46 and 47 were rejected under the judicially created doctrine of obviousness-type double patenting over commonly assigned U.S. Patent No. 6,684,943, which matured from the parent application of the present application.

Applicant is prepared to submit a terminal disclaimer over the ’943 patent at such time that allowable subject matter is identified, which terminal disclaimer will limit the term of any patent issued from this application to the full term of the ’943 patent, and which will require that any such patent that matures from the present application be at all times co-owned with the ’943 patent.

Amendment and Response
U.S. Serial No. 10/729,309
Filed: December 5, 2003
Attorney Docket No: 965-009CON2

**Response to "Obviousness-type Double Patenting" Rejection
of Claims 37, 38, 41-43, 46 and 47 over the '809 Application**

Claims 37, 38, 41-43, 46 and 47 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over the commonly assigned co-pending '809 application.

Applicants note that in the usual instance where two applications are co-pending, the first application to be allowed is issued, and possibly represents a basis for disallowing one or more claims of the later-pending application. While a terminal disclaimer over the co-pending '809 application might be effective, Applicant is reluctant to provide a terminal disclaimer over claims that have not yet been fully defined, and that might change during the prosecution of the '809 application.

Applicant notes the comments in the Office Action to the effect that prosecution of the present application should be suspended in the event that an interference is declared in the co-pending '809 application. Applicant would have no objection to a short suspension of prosecution in the present application in the event that such interference is declared.

**Response to Rejection of Claims 37, 38 and 41 under 35 U.S.C. §101
over claims 41 and 45 of the '809 Application**

Claims 37, 38 and 41 were provisionally rejected under 35 U.S.C. §101 over claims 41 and 45 of the commonly assigned co-pending '809 application. The Examiner has indicated that claims 37 and 38 conflict with claims 41 and 45 of commonly assigned co-pending U.S. Patent Application Serial No. 10/608,809.

In view of the possible declaration of an interference in the '809 application, which could cause prosecution of the present application to be suspended, and in view of the onerous penalties for amending claims under recently decided cases before the Supreme Court of the United States and the United States Court of Appeals for the Federal Circuit, Applicant is reluctant to amend or to cancel any claims in the present application until there is clarity with regard to the disposition of the possible interference.

Applicant, as stated hereinabove, notes the comments in the Office Action to the effect that prosecution of the present application should be suspended in the event that an

Amendment and Response
U.S. Serial No. 10/729,309
Filed: December 5, 2003
Attorney Docket No: 965-009CON2

interference is declared in the co-pending '809 application. Applicant would have no objection to a short suspension in the present application in the event that such interference is declared.

Amendment and Response
U.S. Serial No. 10/729,309
Filed: December 5, 2003
Attorney Docket No: 965-009CON2

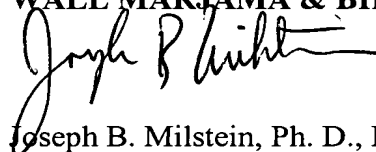
CONCLUSION

Applicant believes that this response is fully responsive and fully in compliance with the requirements of the Rules of Practice of the United States Patent and Trademark Office, and will provide one or more terminal disclaimers as may be required when allowable subject matter is identified. Applicant would have no objection to a short suspension in the present application in the event that an interference is declared in the co-pending '809 application. Applicant submits that pending Claims 37, 38, 41-43, 46 and 47 are now in proper condition for allowance with a terminal disclaimer over the '943 patent, and requests the issuance of a Notice of Allowance at the Examiner's earliest convenience..

If the Examiner believes that contact with Applicant's attorney would be advantageous toward the disposition of this case, the Examiner is requested to call Applicant's attorney at the phone number noted below.

Respectfully submitted,
WALL MARJAMA & BILINSKI LLP

By:



Joseph B. Milstein, Ph. D., Reg. No. 42,897
101 South Salina Street, 4th Floor
Syracuse, NY 13202
Telephone: (315) 425-9000
Facsimile: (315) 425-9114

Date: July 15, 2005

JBM/

Customer No.: ***20874***
20874
PATENT TRADEMARK OFFICE